Islamic Law of Inheritance



BY

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Two Pages of an Old Fiqh Book

اما بعد فانك سالتني ان اوضح لك من السنة امرا تبصر بنفسك على التمسك
به وتدرأ به عنك [illegible] الاقاويل وزيغ محدثات الضالين وقد شرحت
لك منهاجا موضحا لم آل فيه نفسي [illegible] وبدأته بحمد الله ذي الرشد
والتسديد الحمد لله احق ما بدئ واولى من شكر [illegible] الواحد الصمد
ليس له صاحبة ولا ولد [illegible] جل عن المثل فلا شبيه له ولا عديل [illegible]
العليم الخبير المنيع الرفيع [illegible] دان لعلو من خلقه
احاط علمه بالامور وانفذ في خلقه [illegible] خائنة الاعين
وما تخفي الصدور فالخلق عاملون بسابق علمه ونافذون لما خلقهم
له من خير وشر لا يملكون لانفسهم من الطاعة نفعا ولا يجدون
الى صرف المعصية عنها دفعا خلق الخلق بمشيئته عن غير حاجة كانت
به فخلق الملائكة جميعا لطاعته وجبلهم على عبادته فمنهم ملائكة
بقدرته للعرش حاملون وطائفة منهم حول عرشه يسبحون واخرون
بحمده يقدسون واصطفى منهم رسلا الى رسله وبعض مدبرون لامره
ثم خلق آدم بيده واسكنه جنته وقبل ذلك للارض خلقه ونهاه عن شجرة

قد نفذ قضاؤه عليه باكلها ثم ابتلاه بان نهاه عنها ثم سلط عليه
عدوه فاغواه عليها وجعل اكله لها الى الارض سببا فما وجد الى
ترك اكلها سبيلا ولا عنه لها مذهبا ثم خلق للجنة من ذريته
اهلا فهم باعمالها بمشيئته عاملون وبقدرته وبارادته ينفذون
وخلق من ذريته للنار اهلا فخلق لهم اعينا لا يبصرون بها واذانا لا
يسمعون بها وقلوبا لا يفقهون بها فهم بذلك عن الهدى محجوبون
وباعمال اهل النار بسابق قدره يعملون والايمان قول وعمل
وهما شيئان ونظامان وقرينان لا نفرق [illegible] لا ايمان الا بعمل ولا عمل
الا بايمان [illegible] في الايمان يتفاضلون [illegible]
ولا يخرجون بالذنوب من الايمان ولا يكفرون بركوب كبيرة
ولا عصيان ولا [illegible] ولا نوجب لمحسنهم الجنان بعد
من اوجب له النبي صلى الله عليه وسلم ولا نشهد على مسيئهم بالنار والقرآن
كلام الله عز وجل ومن لدنه وليس بمخلوق فيبيد وقدرة الله
ونعته وصفاته كلمات غير مخلوقات ازليات وليست محدثات

Muhammad’s Significance

Muhammad ﷺ : the Final Prophet

‘Muhammad ﷺ is not the father of any of your men, but is the Messenger of God and the seal of the Prophets (*Khatam al-Nabiyyin*)’ (33:40)

Bearer of the Quran

‘Your Companion [Muhammad ﷺ] is neither astray nor being misled, Nor does he speak from (his own) desire. It is no less than Inspiration sent down to him’ (53:3)

Muhammad’s ﷺ Significance



Political Orientations

- Constitution of Medina

Political Sovereignty for God Alone…

- God invoked at beginning and throughout

  ‘Whenever a dispute or controversy likely to cause trouble arises among the people of this document it shall be referred to God and to Muhammad, the Apostle of God’

- The Concept of *Ummah* (Nation)

  Muhammad ﷺ is the Lawgiver and Law given by him ﷺ is known as SHARIAH

Purpose of Islamic Laws



There are five purposes of Islamic Laws or *Shariah*:

1)Protection of Life

2)Protection of Property

3)Protection of Honor

4)Protection of Reason

5)Protection of Religion

Actions in Islam (Limits of Allah)



+2. Required (w*ajib*): e.g. five daily prayers

+1. Recommended (sunna, *mandub, mustahab*): e.g. extra charity

0. Permitted (*mubah*): e.g. wearing a blue dress instead of a green one

-1. Disliked (*makruh*): e.g. not returning the greeting of another Muslim

-2. Prohibited (*haram*): e.g. drinking alcohol, fornication

Sources of Islamic Laws

- God, His Prophet ﷺ and the Authority that Muhammad ﷺ bequeathed (depends on how you believe it should be inherited)… *Imams* or *Ijma*’ (consensus)

Tools for Manipulating and Applying Authority

- Analogy: reasoning includes *a fortiori*, *reductio ad absurdam*
- Considering best interests; aims of the *Shariah*

Definition



Fortiori

With greater reason; for a still stronger, more certain reason

Reductio ad absurdam

(reduction to the absurd) a disproof by showing that the consequences of the proposition are absurd; or a proof of a proposition by showing that its negation leads to a contradiction

Sources of Islamic Laws



Companions

Sunna

Quran

Interpretation

Ijma-e-Sahaba

Pre-Islamic
Laws verified by
Holy Prophet صلى الله عليه وسلم

1. Qyass (analogy)
2. Ijtehad
3. Ahsan
3. Ijma

The Two Groups of Jurists in Islam



- Partisan of Reason

Some principles applied in reasoning

Procedure adopted by the Partisans of Reason

•Quran

•Reliable hadith

•Rulings of Companions

•Best judgment

- Partisan of Hadith

Texts to be followed literally

Procedure adopted by the Partisans of Hadith

•Quran

•Reliable Hadith

•Ruling of Companions

•Weak hadith

•Analogy

Sunni School of Thought

Hanafi: based on Abu Hanifa (d. 767) and his followers in Kufa, the official school of the Ottoman Empire, widespread in India

Maliki: based on the teachings of Malik b. Anas (d. 796) in Medina, the school of North African and Andalusia

Shafi'i: based on the teachings of al-Shafi'i (d. 820), found in Egypt, Southeast Asia, Yemen

Hanbali: based on the teachings of Ibn Hanbal (d. 855), found in great numbers only in Arabia (and Syria)

Shia School of Thought



Asna-e-Ashri: believes in 14 Masoomeen and 12 Imams. They are widely spread and majority in Iran, Iraq, Oman, and a considerable minority in other Islamic countries. T

Ismailies: Beilieves in continuity of Imamat but do not believ in the Imamat of Imam Jafar-e-Sadiq but they accept his nephew Ismail as Sixth Imam. They are found in India, Pakistan and South Africa in good number

Dawoodi Bohra: Dawoodi Boharas believe in continuity of Imamat and they are found in India, Pakistan, Egypt, and Middle East in considerable number

Sulaimani Bohra: They believe in discontinuity of Imamat and they are found in minority in Egypt and other parts of Africa

Why diversity?

Reasons for Divarsity and Disagreement

- Law is probabilistic (*zanni*) due to…
  - ☑ 1. Questions about the reliability of sources
  - ☑ 2. Tremendous potential for interpretive difference

    → "I believe I am right, with the possibility that I am wrong; I believe that my opponent is wrong with the possibility that they are right."
- There always more than one answer! (both between the *madhhabs* and within one *madhhab*)

Case Study (The Hand of a Thief)

- Quranic Verse: 'The thief, male or female, cut off their hand in retribution for what they have done, an exemplary punishment from God, for God is mighty and wise' (Quran 5:38).
- Hadith: 'Do not cut off the hand of the thief for less than ¼ dinar' ≈ Rs 18000/-
- Companion Ruling: Umar suspended the punishment during famine (aims of the Shariah)

Case Study (The Hand of a Thief) → Cont

- *Madhhab* Difference: Hanafis say no amputation for the theft of any food or substance that was licit to begin with, such as unguarded animals or vegetables. Hamblis disagree
- Mitigation: some argue that punishment for theft cannot be established without two confessions; it's reported that Umar and Abu Darda' would encourage the accused to deny the charge, then handle the problem privately.

Case Study (The Hand of a Thief) → Cont



- Sunni jurists think that the hand of a thief should be imputed from the wrist joint and they have arguments in their favour from the act of Sahaba. On the other hand, Shia jurists says that it should be imputed in a way that the lower portion of palm should not be removed as it is necessary to put this bond on the ground during performing a SIJDA in Salat.

Inheritance in ISLAM

Types of Laws in Islam



- Criminal laws: theft, murder, slander…
- Civil laws: regulates relations between people and state
- Business laws: buying, selling, hiring, Riba **(interest)…**
- Family Laws: marriage, divorce, **inheritance**
- International laws: , warfare, treaties, places of peace, places of war, slavery…
- Ritual laws (rules): how should I pray, do pilgrimage?

Divine Decree for Inheritance



يُوْصِيْكُمُ اللّٰهُ فِیْۤ اَوْلَادِكُمْ ۗ لِلذَّكَرِ مِثْلُ
حَظِّ الْاُنْثَيَيْنِ ۚ فَاِنْ كُنَّ نِسَآءً فَوْقَ اثْنَتَيْنِ
فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَ اِنْ كَانَتْ وَاحِدَةً
فَلَهَا النِّصْفُ ؕ وَ لِاَبَوَيْهِ لِكُلِّ وَاحِدٍ
مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ اِنْ كَانَ لَهٗ وَلَدٌ ۚ
فَاِنْ لَّمْ يَكُنْ لَّهٗ وَلَدٌ وَّوَرِثَهٗۤ اَبَوٰهُ فَلِاُمِّهِ
الثُّلُثُ ۚ فَاِنْ كَانَ لَهٗۤ اِخْوَةٌ فَلِاُمِّهِ السُّدُسُ
مِنْۢ بَعْدِ وَصِيَّةٍ يُّوْصِيْ بِهَاۤ اَوْ دَيْنٍ ؕ
اٰبَآؤُكُمْ وَاَبْنَآؤُكُمْ لَا تَدْرُوْنَ اَيُّهُمْ
اَقْرَبُ لَكُمْ نَفْعًا ؕ فَرِيْضَةً مِّنَ اللّٰهِ ؕ اِنَّ اللّٰهَ
كَانَ عَلِيْمًا حَكِيْمًا ﴿۱۱﴾

Surah-e-Nisa : Verse 11

Divine Decree for Inheritance

- Allah instruct you concerning your children's (inheritence); a male recieve a share equal to that of two females. But if they (the children) are women, and are more then (or equal to) two, their share is two thirds of that which he (the deceased) had left. And if there is only one woman, her share is half (of the estate). And for his parents, each one's share is a sixth of that which he left if he had children. But if he had no children, and the parents inherits from him, the mother's share is one third. And if he had siblings, the mother share is one sixth. (These distribution should be done) after the payment of any bequeathals that he may have made or debts (that he may have had). Your parents and offspring-- you do not know which among them are nearest to you in benifit. (These share are) an ordainment imposed by Allah. Indeed Allah is knowing and wise.

Surah-e-Nisa : Verse 11

Divine Decree for Inheritance



وَلَكُمْ نِصْفُ مَا تَرَكَ اَزْوَاجُكُمْ اِنْ لَّمْ
يَكُنْ لَّهُنَّ وَلَدٌ ۚ فَاِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ
الرُّبُعُ مِمَّا تَرَكْنَ مِنْۢ بَعْدِ وَصِيَّةٍ يُّوْصِيْنَ
بِهَآ اَوْ دَيْنٍ ۗ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ اِنْ
لَّمْ يَكُنْ لَّكُمْ وَلَدٌ ۚ فَاِنْ كَانَ لَكُمْ وَلَدٌ
فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ مِّنْۢ بَعْدِ وَصِيَّةٍ
تُوْصُوْنَ بِهَآ اَوْ دَيْنٍ ۗ وَ اِنْ كَانَ رَجُلٌ
يُّوْرَثُ كَلٰلَةً اَوِ امْرَاَةٌ وَّلَهٗۤ اَخٌ اَوْ اُخْتٌ

فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَاِنْ كَانُوْۤا
اَكْثَرَ مِنْ ذٰلِكَ فَهُمْ شُرَكَآءُ فِي الثُّلُثِ مِنْۢ
بَعْدِ وَصِيَّةٍ يُّوْصٰى بِهَآ اَوْ دَيْنٍ ۙ غَيْرَ
مُضَآرٍّ ۚ وَصِيَّةً مِّنَ اللّٰهِ ۗ وَاللّٰهُ عَلِيْمٌ
حَلِيْمٌ ۗ ﴿١٢﴾

Surah-e-Nisa : Verse 12

Divine Decree for Inheritance

- You receive one half of that which your wives leave if they have no child. If they have a child, you receive one forth of what they leave —after payment of any bequeathals that they had made of debts (that they had). And they receive one fourth of that which you leave if you have no child. If you have a child, they recieve one eighth of what you leave —after payment of any bequeathals that you had made of debts (that they had). If the man or woman whose inheritance is in question has neither ascendants nor descendants, but has a maternal brother or sister, each one of them to receives a sixth; and if they were more then two, they share a third—after payment of any bequeathals that had been made of debts (that are owed), and that are not intended to cause harm (to the legal inheritors). This is a commandment from Allah, and Allah is ever knowing and Tolerant.

Surah-e-Nisa : Verse 12

When a Muslim dies there are four duties which need to be performed. These are:

- Payment of funeral expenses.
- Payment of his/her debts.
- Execution of his/her will.
- Distribution of remaining estate amongst the heirs according to Sharia.

Inheritance in Pre-Islamic Arabia



- In old customary system only the male agnates (asaba) were entitled to inherit. (Rejected by Law Giver ﷺ)
- Females were not entitled for any type of inheritance (Rejected by Law Giver ﷺ)
- Amongst the male agnates there were rules of priority, which determined which of the surviving male agnates were entitled to inherit. **(It is likely that this rule of priority is continued in Islam. In Islam son takes priority over the father who in turn takes priority over the brothers who in turn take priority over the paternal uncles.)**

The Pre-Islamic Practice according to Sunnis and Shias



- The Sunni Islamic law of inheritance is therefore, an amalgamation of the Quranic law superimposed upon the old customary law to form a complete and cohesive system. The rights of the asaba were recognized by the Prophet Muhammad (ﷺ) himself. Abdullah ibn Abbas (RA) reported that the Prophet Muhammad (ﷺ) said, "Give the Faraid (the shares of the inheritance that are prescribed in the Quran) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased." (Sahih al-Bukhari)
- **The Shia jurists on the contrary took the view that since the old agnatic customary system had not been endorsed by the Quran it must be rejected and completely replaced by the new Quranic law.**

Obligatory Sharer (Ashab al-Faraid)

- Women in this context refers to daughters. The Quran gives the daughter a specific share. In legal terminology the daughter is referred to as a Quranic heir or sharer (ashab al-faraid). The Quran mentions nine such obligatory sharers as we shall see later. Muslims jurists have added a further three by the juristic method of qiyas (analogy). So in Islamic jurisprudence there are a total of twelve relations who inherit as sharers.

Safeguard to the Interest of Women

- "Allah commands you regarding your children. For the male a share equivalent to that of two females." [Quran 4:11]

- ***This first principle which the Quran lays down refers to males and females of equal degree and class.***
- ***This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister,***
- ***Similarly a son's son inherits twice as much as a son's daughter and so on.***
- ***This principle is however, not universally applicable as we shall see later in verse 4:12, the descendants of the mother notably the uterine brother and uterine sister inherit equally as do their descendants.***

Safeguard to the Interest of Women (Cont)

- **"If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]**
- ***If there are any sons the share of the daughter(s) is no longer fixed because the share of the daughter is determined by the principle that a son inherits twice as much as a daughter. In the absence of any daughters this rule is applicable to agnatic granddaughters (son's daughters). The agnatic granddaughter has been made a Quranic heir (sharer) by Muslim jurists by analogy.***

Safeguard to the Interest of Women (Cont)

- **"If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]**

- ✓ ***If there is only a single daughter or agantic granddaughter her share is a fixed one-half.***
- ✓ ***if there are two or more daughters or agnatic granddaughters then their share is two-thirds.***
- ✓ ***Two or more daughters will totally exclude any granddaughters.***
- ✓ ***If there is one daughter and agnatic granddaughters, the daughter inherits one-half share and the agnatic granddaughters inherit the remaining one-sixth, making a total of two-thirds. If there are agnatic grandsons amongst the heirs then the principle that the male inherits a portion equivalent to that of two females applies.***

Parents and Grandparents

- **"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the heirs then for the mother one-third." [Quran 4:11]**
- ***The Arabic word "walad" has been variously translated as child, son, children and offspring by translators. However, there is universal agreement amongst the Sunni Muslim jurists that "walad" here refers to any child or agnatic grandchild (grandchild through son).***

Parents and Grandparents (Cont)

- **"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the (only) heirs then for the mother one-third." [Quran 4:11]**

- ✓ **If there is a child or agnatic grandchild amongst the heirs then each of the parents inherits one-sixth.**
- ✓ **In the absence of a child or agnatic grandchild the mother inherits one-third.**
- ✓ **The share of the father is not mentioned under these circumstances. The father in fact inherits as a residuary (a residuary heir gets whatever remains of the inheritance after the Quranic sharers have been allocated their shares, residuary heirs are generally male agnates) under these circumstances.**
- ✓ **To these two Quranic heirs, the mother and the father, the maternal grandmother and paternal grandfather have been added by analogy. The maternal grandmother substitutes the mother in the latter's absence.**

Parents and Grandparents (Cont)

- **"… but if he has brothers (or sisters) then for the mother one-sixth"** **[Quran 4:11]**
- ***The consensus of opinion is that the word "akhwatun" used in the Quranic text means two or more brothers or sisters of any kind. So that any combination of full, consanguine or uterine brothers and sisters, if two or more will mean that the mother inherits a one-sixth share.***

Husband

- **"And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind; … " [Quran 4:12]**

- Again according to Islamic law the word "walad" here is interpreted as child or agnatic grandchild.
- The husband, another Quranic heir, inherits one-half in the absence of a child or agnatic grandchild.
- He will inharit one-quarter in the presence of a child or agnatic grandchild.

Husband (Case Study)



- Before continuing with the translation of verse 4:12 let us consider a situation where a woman dies leaving behind a husband and both parents as the only heirs.
- The husband inherits one half of the estate, there is no argument on this point.
- However, if we give the mother a one-third share then the father is left with only one-sixth. Should the male (father) not get twice the share of the female (mother) of equal degree and class?

Husband (Case Study continued)



- **This problem arose during the caliphate of Umar ibn Khattab (RA). After consultation with the learned companions (RA) the majority opinion was that the father should get twice the share of the mother, that is to say, the principle that the male inherits the share of two females is upheld. The father therefore, inherits one-third and the mother one-sixth**

Widow(s)

- **"And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind; …" [Quran 4:12]**

- This statement gives us the ruling on the share of the wife (widow).
- The share of the wife is one-quarter in the absence of a child or agnatic grandchild
- Her share will be one-eighth in the presence of a child or agnatic grandchild.
- Two or more wives share equally in this prescribed share.

Kalala Man and Kalala Woman

- **"And if a kalala man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]**

- ***The interpretation of the second half of verse 4:12 has been a source of controversy, one reason being the meaning of the word "kalala".***
- ***This word "kalala" occurs only in two places in the Quran [4:12 and 4:176] and in both occasions regarding inheritance. "Kalala" may mean "one who leaves neither parent nor child" or "all those except the parent and child". It is generally taken to mean the former.***

Uterine Siblings

- **"And if a kalala man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]**

Uterine Siblings (Same Mother, Different Fathers)

- ***It is universally agreed that the siblings referred to in the above verse are uterine siblings (those with the same mother but different fathers).***

- ***The uterine siblings only inherit in the absence of any descendants or ascendants. If there is only one uterine sibling he or she inherits a one-sixth share. If there are two or more uterine siblings they together inherit a one-third share equally.***

- The heirs mentioned in the Quran (mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister, consanguine sister) together with the three heirs added by juristic method of analogy (paternal grandfather, maternal grandmother and agnatic granddaughter) form a group of heirs called Quranic heirs or sharers (ashab al-furud). These heirs when entitled to inherit are given their fixed shares and the remaining estate is inherited by the residuaries (asaba).

Other Residuaries



- Under Islamic law some of the Quranic heirs, namely the father, paternal grandfather, daughter, agnatic granddaughter, full sister, consanguine sister and the mother, can also inherit as residuaries under certain circumstances.

Primery Heirs



- Certain heirs referred to as primary heirs are always entitled to a share of the inheritance, they are never totally excluded. These primary heirs consist of the spouse relict, both parents, the son and the daughter.

Rules of Exclusion

All remaining heirs can be totally excluded by the presence of other heirs. There are several rules of exclusion which determine the exclusion of some heirs by the presence of others. In breif the rules of exclusion are as under:

1. A person (e.g. brother) who is related to the deceased through another (i.e. father) is excluded by the presence of the latter,
2. An individual nearer in degree (proximity) to the deceased excludes the one who is remoter within the same class of heirs (son excludes all grandsons),
3. Full blood excludes half-blood through father (so a full brother will exclude a consanguine brother but not a uterine brother).

Note: The majority view is that the full and consanguine brother is not excluded by the paternal grandfather. However, the Hanafi fiqh allows the paternal grandfather to totally exclude the agnatic siblings

Prevention by Disqualification from Inheritance



- Heirs may also be prevented from inheriting by disqualification.

1. Difference of religion and
2. Homicide of the deceased.